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Ralph A. Dowell of DOWELL & DOWELL P.C.
2111 Eisenhower Ave
Suite 406
Alexandria VA 22314

In re Application of:
FROMENT, JEAN-PAUL et al.
Serial No.: 10/564,824
Filed: Jan. 18, 2006
Docket: 15293NP

Title: HEALD FRAME AND WEAVING
MACHINE EQUIPPED WITH SAME

DECISION ON PETITION

This is a decision on the petition filed on Jul. 2, 2008 to withdraw the finality of the Office action of Jun. 2, 2008. The petition is being considered pursuant to 37 CFR § 1.181 and no fee is required for the petition.

The petition is **DISMISSED**.

The record shows that:

1. On Nov. 15, 2007, the examiner issued a final rejection.
2. On Mar. 11, 2008, the applicant filed amended claims and arguments, and filed an extension of time.
3. On Apr. 23, 2008, an advisory action was issued and the examiner stated that the Mar. 11, 2008 amendments did not place the application in condition for allowance because the amendments did not overcome the prior art. The examiner also indicated that the amendment will be entered for appeal purposes.
4. On May 15, 2008, the applicant submitted a Request Continued Examination (RCE) of the Mar. 11, 2008 amendments and an extension of time.
5. On Jun. 2, 2008, the examiner issued a first action final rejection of the amended claims of the RCE under MPEP 706.07(b). In the final rejection, the examiner considered and addressed the limitations and arguments of the Mar. 11, 2008 amendments. The examiner determined that the arguments were the same as the applicant's prior arguments and that the amendments added no additional limitations beyond the prior claims' limitations.
6. On Jul. 2, 2008, the present petition was filed requesting withdrawal of the finality of the Jun. 2, 2008 final rejection. The petitioner asserted that the finality of the Jun. 2, 2008 rejection was premature and that it was necessary of the examiner to consider the patentability of the Mar. 11, 2008 amended claims.

Discussion and Analysis

In the present petition, it is stated that the final rejection of Jun. 2, 2008 was premature because it was issued after the May 15, 2008 RCE. The petitioner summarized Jun. 2, 2008 final rejection, noting that the examiner determined that the Mar. 11, 2008 amended claims were drawn to the

same invention as claimed in the earlier application and that the claims could have been finally rejected on grounds of the art previously of record. The petitioner further states that it was necessary for the examiner to consider the patentability of the claims based upon the newly added amendment language. The petitioner also argues that the amendment to the claims submitted in March of 2008, which was entered upon the filing of the Request for Continued Examination, was a bona fide attempt to advance the application to issuance by further distinguishing the claim language over the prior art. Therefore, it is believed to be premature to close applicant's rights to further prosecution by issuing a Final Office Action in response to the Request for Continued Examination (RCE).

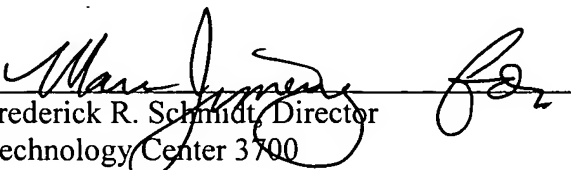
The record shows that the examiner has determined that the Mar. 11, 2008 amendment did not add any limitations which change the invention beyond what was previously claimed. In the advisory action of Apr. 23, 2008, the examiner also considered the limitations of amended claims of Mar. 11, 2008 and determined that the amended claims remain unpatentable over the same prior art of record. In the Jun. 2, 2008 final rejection, the examiner stated the claims of the amendments of Mar. 11, 2008 that were filed in connection with the May 15, 2008 RCE were drawn to the same invention as previously claimed and could have been finally rejected on the grounds and art of record of the next Office action if they had been entered in the earlier application. A comparison of the claims filed on Aug. 21, 2007 and the amended claims of Mar. 11, 2008 clearly shows the amendments to the claims are drawn to the same invention. The only substantial difference is that the amendment of Mar. 11, 2008 slightly varies the scope of claims 1 and 14. Thus, the examiner issued a final rejection after RCE based on the grounds of rejection and art of record pursuant to MPEP 706.07(b)¹. The first action final rejection is proper.

Conclusion

For the foregoing reasons, the relief requested by petitioners will not be granted. Specifically, the examiner's finality of the Office action dated Jun. 2, 2008 is proper under MPEP 706.07(b).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

The petition is dismissed.


Frederick R. Schmidt, Director
Technology Center 3700

¹ MPEP 706.07(b), paragraph 2 states: >The claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE (with a submission and fee under 37 CFR 1.114) where all the claims in the application after the entry of the submission under 37 CFR 1.114 (A) are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114, and (B) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE under 37 CFR 1.114.<